Ah Bah v. *Hong Ah Mye*[10] in which the learned judge came to the conclusion that the tenant's equity was not defeated by a bare notice to quit despite the fact that the house had become a completely "new building" within the meaning of the Control of Rent Ordinance of Singapore because of the continuous repairs done to it.

Similarly in this case the fact that the old house was demolished and that a new one was built, even without consent of the respondents, did not in any way affect the equitable estoppel of the appellant. If at all, such equity was further strengthened by the increase in the ground rent and the agreement as to tea-money, towards which $500 was paid by appellant. The failure on the part of the appellant to sign a written agreement (P9) was, in our view, fully justified because of the material differences between it and the verbal agreement reached earlier. The appellant acted properly in taking the agreement to see his solicitor and in subsequently refusing to sign it when he was advised that its terms differed from what he had earlier on agreed with the respondents. In the circumstances there ought to be a judgment for the appellant.

The appeal is therefore allowed with costs.

Appeal allowed.

Solicitors: *L.M. Ong & Co.; Hassan & Kong Yeam.*

ROSLAN BIN ABDULLAH v. NEW ZEALAND INSURANCE CO. LTD.

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman F.J. & Tan Chiaw Thong J.) May 11 & July 16, 1981]

[Kuching — Federal Court Civil Appeal No. 202 of 1980]

Insurance — Motor vehicle — Vehicle insured in the name of former owners of vehicle — Vehicle transferred to new owner — Policy lapsed — Sarawak Motor Vehicles (Third Party Risks) Ordinance (Cap. 130), s. 9(1).

Practice and Procedure — Statement of claim — Whether disclosing no reasonable cause of action, frivolous or vexatious — Application to strike off — R.H.C. 1980, O. 18 r. 19.

In this case the appellant was injured in a collision between a truck and another truck belonging to the United Malaysia Co. Ltd. and driven by one Lee Nyong Kong. The appellant had obtained judgment against the United Malaysia Co. Ltd. and Lee Nyong Kong. He brought an action against the respondents, who were the insurers of the truck. The truck had been insured in the name of the previous owners of the truck. The respondents contended that they were not liable as no judgment had been entered against the party insured. They applied for the statement of claim to be struck out under Order 18 rule 19 of the Rules of the High Court, 1980 on the grounds that it disclosed no reasonable cause of action, was frivolous, vexatious and an abuse of the processes of the court. The learned Judicial Commissioner allowed the application and the appellant appealed.

Held: (1) in this case, once ownership of the truck changed the insurance policy lapsed unless there was novation of the policy, which was not alleged. The driver of the truck was not covered by the insurance policy as there was no insurance policy at the time of the accident;

(2) the claim of the appellant was obviously unsustainable and therefore the summary procedure under Order 18 rule 19 of the Rules of the High Court, 1980, was applicable.

Cases referred to:-

(1) *Peters* v. *General Accident & Life Assurance Corpn. Ltd.* [1937] 4 All E.R. 628.

(2) *Watkins* v. *O' Shaughnessy* [1939] 1 All E.R. 385.

(3) *A.G. of Duchy of Lancaster* v. *L. & N.W. Rly Co.* (1892) 3 Ch. 274.

The following cases were also referred to in argument: *Letchumi* v. *Asia Insurance Co. Ltd.* [1972] 2 M.L.J. 105; *Ahmad Sandara Lela Putera & Another* v. *Queensland Insurance Co. Ltd.* [1975] 1 M.L.J. 269; *Manap bin Mat* v. *General Accident Fire & Life Assurance* [1971] 1 M.L.J. 134; *Tattersall* v. *Drysdale* [1935] All E.R. 112; *Abu Bakar bin Haji Yusuf* v. *Mohamed Hamzah b. Hanapiah & Anor.* [1978] 2 M.L.J. 78.

FEDERAL COURT.

Bong Ban Chong for the appellant.

Chew Pok Oi for the respondent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivered by Lee Hun Hoe C.J. (Borneo)): The appellant, according to his statement of claim, was travelling as an attendant in a truck bearing registration No. KC 6007 which was in collision with another truck belonging to the United Malaysia Co. Ltd. driven by one Lee Nyong Kong, No. KA 343. In Civil Suit No. K.124 of 1976, judgment was entered in his favour against both the United Malaysia Co. Ltd., and Lee Nyong Kong.

For reasons best known to appellant, probably inability to pay on the part of the two aforementioned, he then filed this suit against the respondent company, alleging that by a policy of insurance issued by respondents to a Messrs. Wee & Wee Realty Sdn. Bhd., the respondents had agreed to indemnify any person driving on the insured's order or with their permission against any liability incurred by that person in respect of any loss or expense caused by or arising out of the use on a road of truck KA 343, and that Lee Nyong Kong was driving on the orders and/or with the permission of Messrs. Wee & Wee Realty Sdn. Bhd. at the time of the collision.

The respondents in their defence contended, *inter alia*, that since no judgment was entered against the party insured, i.e. Messrs. Wee & Wee they were not liable to pay appellant under Clause 9(1) of the Motor Vehicles (Third Party Risks) Ordinance (Cap. 130).

Respondents then filed a summons in chambers praying that the statement of claim be struck out under Order 18 rule 19 of the Rules of the High Court 1980 on the grounds that it disclosed no reasonable cause of action, was frivolous, vexatious and an abuse of the process of the court.

The appellant relied on section 9(1) of the Motor Vehicles (Third Party Risks) Ordinance (Cap. 130) for recovery of the judgment he had obtained in C.S. No. K.124 of 1976 from the respondents.

Section 9(1) reads:

"If, after a certificate of insurance has been issued under subsection (4) of section 4 to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of subsection (1) of section 4 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to

the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments."

The learned Judicial Commissioner noted that the defendants against whom the judgment in C.S. K.124/76 i.e. Lee Nyong Kong & United Malaysia Co. Ltd. was obtained were not the insured, Messrs. Wee & Wee Realty Sdn. Bhd. to whom the respondents in this appeal had issued the policy in respect of truck KA 343. He therefore held that the judgment in Civil Suit K.124/76 is not the judgment within the meaning of section 9(1), and accordingly allowed the application to strike out the statement of claim.

The question to be answered is therefore whether the judgment obtained in C.S. K.124/76 is a judgment obtained "against any person insured by the policy" i.e. the policy issued to respondents in respect of truck KA 343.

Mr. Chew for the respondents submits that the only material issue is the status of the policy issued to Messrs. Wee & Wee.

According to the affidavit of Hibbard, manager of the respondent company, respondents had indeed issued a policy of insurance to Messrs. Wee & Wee Realty Sdn. Bhd. in respect of the truck for the period July 24, 1973 to July 23, 1974, but that there had been no assignment of the policy from Wee & Wee to United Malaysia Co. Ltd. or to any one else (if indeed assignment, rather than novation of the contract of insurance is what he really meant). It is common ground that United Malaysia Co. Ltd. were the new owners of truck KA 343.

Mr. Chew submits that once ownership of the truck changes the insurance policy cover lapses unless there is a novation of the policy. It was never alleged that there had been such novation (or assignment as the appellant chose to call it) of the policy.

In *Peters* v. *General Accident & Life Assurance Corpn. Ltd.*[1] the vendor of a motor car insured by the defendants handed over the insurance policy with the car to the purchaser. The policy contained the usual clause extending the cover to any person driving with the consent or permission of the insured. The plaintiff, who had been injured by the car after the sale had been completed, obtained a judgment against the purchaser, and in this subsequent action sought to recover the damages he had been awarded from the present defendants under the provisions of the Road Traffic Act, 1934, section 10; —

Goddard J. (as he then was) held:

(i) when the vendor sold the car, the insurance policy automatically lapsed.

(ii) at the time of the accident, the purchaser could not be said to be driving the car by the order or with the permission of the vendor, as the car was then the purchaser's own property.

(iii) the insured is not entitled to assign his policy to a third party. An insurance policy is a contract of personal indemnity, and the insurer cannot be compelled to accept responsibility in respect of a third party who may be quite unknown to them.

It should be noted that section 10 of the Road Traffic Act, 1934 like section 9(1) of the Sarawak Ordinance enables any person who has obtained judgment against any person insured by a policy to bring an action against the insurance company.

The driver of truck KA 343 cannot it was argued, be covered by the terms of a policy which had lapsed, the simple fact being that there was no insurance policy at the time of the accident.

Another authority we find to be of great assistance is *Watkins* v. *O'Shaughnessy*.[2] At a public auction held by the second defendants (Kennings) the first defendant bought a motor car. He drove it away, although, to the knowledge of the servant of the second defendants, the car was uninsured and unlicensed. In fact, the servants of the second defendant lent the first defendant the company's trade number plates for the purpose, and supplied him with a slip, referring to a different car but altered by them to appear to refer to the car in question, and assured him that such a proceeding was quite in order. The plaintiff was injured by the alleged negligent driving of the first defendant, but, as a judgment against him would be useless, the plaintiff did not ask for judgment against him, but asked for judgment against the second defendants, alleging that they had caused or permitted the first defendant to use a motor vehicle in respect of which there was not in existence a policy of insurance in accordance with the Road Traffic Act, 1930, section 35.

The Court of Appeal held that as the sale had been completed before the driving of the car by the first defendant, the second defendants had no control over him, and could not, therefore, be said to have "caused or permitted" him to drive, and, in any event, the acts of the servants of the second defendants were quite unauthorised by them.

We are informed by counsel for the appellant that Wee & Wee Realty Sdn. Bhd. and United Malaysia Co. Ltd. the second defendant in C.S. K.124/76 are sister companies. Be that as it may they are distinct entities. The respondents were no longer the owners of the truck and therefore there cannot be any question of them ordering or permitting the first defendant in C.S. K.124/76 to drive it.

We have considered the authorities cited in the written submission of Mr. Bong Ban Chong, authorities which we find are either inapplicable to the facts of the present appeal, or not in any way in his favour.

The summary procedure under Order 18 rule 19 can only be adopted when it can be clearly seen that a claim or answer is on the face of it "obviously unsustainable": (see *A.G. of Duchy of Lancaster* v. *L. & N.W. Rly. Co.*[3]).

We are satisfied that the appellant's claim clearly meets this description and accordingly dismiss the appeal with costs.

Deposit to respondents to account of taxed costs.

Appeal dismissed.

Solicitors: *Sim & Yee; Chan, Jugah, Wan Ullok & Co.*